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CO-OPERATIVES IN ONTARIO:

Legal Requirements

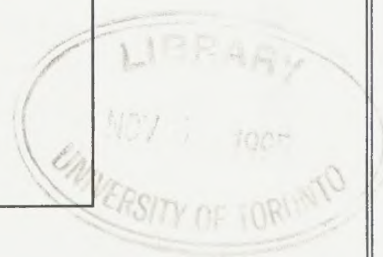
CO-OPERATIVE PUBLICATIONS

These materials to help set up and run your co-op are available free of charge from Co-operative Development Services:

- *Guide to Setting up a Co-operative* covers the basic steps to start a co-operative.
- *Incorporating a Co-operative* contains brief step-by-step instructions on how to incorporate a co-operative, as well as all the forms you need.
- *Filing Requirements and Record Keeping* outlines the information about your co-op that you should send to the Ministry of Finance, such as financial statements and offering statements. This guide also describes the records that the Co-operative Corporations Act requires co-ops to keep.
- *Legal Requirements* describes how co-ops can ensure they comply with the Co-operative Corporations Act. It describes such things as how to pass by-laws, and directors' legal responsibilities.

Co-operative Development Services staff are available to answer your questions and explain government programs and services for co-ops. You can call or write us at:

Co-operative Development Services
Ministry of Finance
250 Yonge Street, 30th Floor
Toronto ON M5B 2N7
Tel: (416) 326-9301
Fax: (416) 326-9313



(CE DOCUMENT EST DISPONIBLE EN FRANÇAIS)

June 1995

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WHAT'S INSIDE

This guide contains information to help your co-op meet the legal requirements of the Co-operative Corporations Act. It will interest all members, but is especially important for directors.

This guide is intended only as a resource for your co-op; it is not meant to replace reading the Act or getting legal advice about your co-op's unique situation.

All co-ops should have an up-to-date copy of the Co-operative Corporations Act, including its Regulations. The current Act was changed in 1992 to expand the powers of co-operatives and to establish frameworks for worker co-ops and non-profit housing co-ops. Changes made in June, 1994 give co-ops more ways to raise capital, and they create a framework for multi-stakeholder co-ops, a new type of co-op. The 1994 changes are contained in Bill 160. The Regulations under the Act were also amended in May 1995. The amended Regulations, which are contained in Ontario Regulation 234/95, clarify requirements for offering statements and update the forms for articles of incorporation.

Throughout the guide, you will see notes in brackets, such as [CCA, Section 5] or [Regulation 178, Section 12.2]. These refer to the sections of the Co-operative Corporations Act (CCA) or the Regulations to the CCA, respectively, that are being covered. Notes such as [Bill 160, Section 1] or [Regulation 234/95, Section 12.9] refer, respectively, to changes to sections of the CCA made by Bill 160, or changes to the Regulations made in May 1995.

In *Toronto*, you can buy copies of the Act, Bill 160, and the new Regulations at the Ontario Government Bookstore, 880 Bay Street. In *Ottawa*, you may go to Access Ontario, Rideau Centre Mall or to Renouf Books, 61 Sparks Street. To place *mail orders* call or write:

Publications Ontario
50 Grosvenor Street
Toronto, Ontario
M7A 1N8

In Toronto: 326-5300

Toll Free: 1-800-668-9938

Toll Free From Area Code 807: Ask the operator for Zenith 67200.

Payment in advance is required for mail orders.

MEMBERSHIP

Open, voluntary membership is one of the basic principles of co-operatives. Anyone who can use a co-op's services and accept the responsibilities of membership can apply to become a member. In their by-laws, co-ops are free to define their own membership conditions as well as members' rights and responsibilities. However, these by-laws must themselves comply with the Act.

Becoming A Member

[CCA, Sections 1, 60, 61, and 63;
Bill 160, Sections 1 and 61]

Subject to the co-operative's articles and by-laws, anyone 16 or over may apply to the co-op's board of directors to join the co-op.

Non-profit and business corporations may also be members of co-ops. Unincorporated associations may not be members directly. However, any of the association's members may join a co-op and represent that association's interests.

Members agree to follow the co-op's by-laws and to comply with any conditions of membership. For example, a co-op may require members to pay a membership fee, buy a minimum number of shares, or make a member loan to the co-op.

In a **worker co-op**, only individuals employed by the co-op can be members. In this kind of co-op, at least 75% of all employees are members and at least 75% of permanent, full-time employees are members.

In a **multi-stakeholder co-op**, members have to belong to a specific stakeholder group and may not belong to more than one stakeholder group at the same time. Applications for membership in this kind of co-

op have to be approved by the directors representing the appropriate stakeholder group.

Basic Rights of Members

[CCA, Sections 32, 70, 71 and 119]

A fundamental principle of co-operatives is democratic control by members. Some of the important members' rights given by the Act to reflect this principle include the right to:

- Elect and remove directors;
- Make motions;
- Present and vote on resolutions;
- Hear reports on their co-op's operations and financial status;
- Discuss any issue they have asked the directors to put on the agenda.

For more information on members' meetings, please refer to the "Members' Meetings" section of this guide.

Limited Liability of Members

[CCA, Sections 72, 73, 145, and 169]

An important feature of co-ops is that members have limited liability. This means that members are generally not responsible for their co-op's debts and liabilities. By joining and investing in a co-op, members risk losing only what they have invested.

However, to ensure that the protection of limited liability is not used by the co-op to avoid paying its debts, the Act states that members may be liable to the co-op's creditors if:

- Members have been paid by the co-op as a result of an amendment to the articles reducing its issued loan or share capital. These members may be liable to the co-op's creditors for the amount they were paid.
- Members have received any of the co-op's property before the co-op's creditors have been repaid on dissolution. Members may be liable to creditors for the amount received.

Members cease to enjoy the protection of limited liability if their total number falls below five (three in the case of worker co-ops). If a co-op does not meet these membership levels for more than six months, each member is responsible for the debts and liabilities incurred during this time. Members may avoid liability by sending a letter to the Ministry of Finance protesting the co-op's exercise of its corporate powers without enough members. After notifying the co-op, the Ministry of Finance may cancel its certificate of incorporation if the co-op refuses or neglects to bring the number of members up to the required level.

Leaving a Co-op

[CCA, Sections 64, 67, and 171.14;

Bill 160, Sections 32 and 64;

Regulation 234/95, Sections 12.5 and 12.9]

Co-operatives are voluntary associations. A person may choose to leave at any time by giving their co-op's secretary six months notice. Since the main purpose of co-ops is to provide service to members, members usually have the right to get back their investment in the co-op when they leave. More specifically, within six months the co-op is generally required to:

- Redeem or buy back the member's shares at their par value plus a premium, if any. If the member agrees, the co-op may also redeem shares at less than par value.

- Pay the member all dividends that have been declared but not paid on their shares.
- Repay member and other demand loans made by the member to the co-op, along with any interest owing.

The directors may delay repaying a withdrawing member's investment if they believe that doing so all at once would not be in the co-op's best interests. This delay may not be longer than five years and at least 20% of the member's investment must be repaid each year.

If the co-op agrees, members planning to leave may maintain some or all of their preference shares or loans in the co-op. Former members choosing to do this may later ask the co-op to redeem their preference shares and repay their loans by giving six months notice.

A co-op cannot repay a withdrawing member's investment if the co-op is insolvent or the board of directors believes that doing so would be harmful to the co-op's financial stability.

The co-op's articles may allow shares to be redeemed at less than par value if the directors believe it is necessary to the co-op's financial well-being. To do so, the directors must notify affected shareholders that they intend to redeem their shares at less than par value. The shareholders have the right to dissent to the redemption price of the shares or to retain ownership of them.

If the shareholder dissents to the price, the price is set by an arbitration process determined by the Regulations and the co-op's articles. The arbitration process contained in the Regulations requires the shareholder and co-op to agree on an arbitrator to determine the redemption price. If the shareholder and co-op cannot agree on a single arbitrator, then each party selects one arbitrator, who in turn together select a third arbitrator. The redemption price is then determined by a majority vote of the three arbitrators.

The articles may also permit the co-op to issue preference shares that it is not required to redeem when a member leaves the co-op. The shareholder's right to sell or transfer such shares has to be fully described in the articles and offering statement.

In non-profit housing co-ops, members planning to move out of their units have to give their co-ops advance notice of their intention to do so. The form and amount of notice a co-op may require is set out in its by-laws.

Terminating Membership

[CCA, Sections 32, 49, and 67;
Bill 160, Section 32]

Since co-ops depend on the support of active, committed members, the Act allows a co-op to terminate the membership of those who have not used its services for two years or more.

A co-op may also terminate a corporate membership if the member is about to be dissolved.

Upon terminating membership, the co-op must buy back the member's shares and repay member and other demand loans the member made to the co-op.

A co-op redeeming shares for these reasons must pay the member the book value or the par value of the shares, plus any premiums and unpaid dividends, whichever is lower.

A co-op may not terminate an individual or corporate membership if the co-op is insolvent or the board of directors believes that buying back members' shares or repaying loans would be harmful to the co-op's financial stability.

Expelling a Member

[CCA, Sections 66 and 67;

Bill 160, Section 66]

From time to time, co-ops may have to expel a member. This usually happens when the member has broken an important by-law. Because expulsion is serious, the Act has procedures to ensure members are treated openly and fairly. **Non-profit housing co-ops have their own set of procedures to expel members.** These are described in the next section.

A co-op may expel a member by having a majority of the board of directors pass a resolution. For this resolution to be valid, the member must get written notice that the board has called a meeting to consider expelling him or her and its reasons for doing so. The board must give this notice at least 10 days before the date of the meeting. These meetings must be held at least 30 days before the co-op's annual meeting.

The member, or his or her representative, has the right to speak at such meetings and submit written statements to the board.

The co-op's secretary must notify the member of the board's decision within five days of the meeting.

Within one year of a member's expulsion, the co-op must:

- Buy back the member's shares at their par value, along with any premiums and unpaid dividends. However, the articles may specify that the co-op is not required to redeem certain classes of preference shares in these circumstances. The characteristics of such shares must be described in the articles and offering statement.
- Repay member loans and other demand loans made by the member to the co-op, together with any interest owing on these loans.

A co-op may not expel a member if it is insolvent or the board believes that buying back the member's shares or repaying the member's loans would be harmful to the co-op's financial stability. This also applies to co-ops without share or loan capital.

Appealing an Expulsion

A member who has been expelled has the right to appeal his or her expulsion at the next general or annual members' meeting. At this meeting, a majority of the members may confirm or overrule the board's decision.

A member who wishes to appeal must notify the board of directors within 21 days of receiving his or her expulsion notice.

The member making the appeal has the right to have a written statement distributed (at the co-op's expense) together with the notice of the meeting at which his or her appeal will be considered. The board of directors must receive this statement at least seven days before the notice of the members' meeting is scheduled to be mailed.

Terminating Membership and Occupancy Rights in Non-Profit Housing Co-operatives

[CCA, Sections 171.8, 171.9, and 171.23]

The Act sets out two ways of terminating membership in a non-profit housing co-op, depending on whether or not a member has occupancy rights. Specifically:

- If a member does not have occupancy rights, the co-op may terminate membership and expel him or her in the same way as described in the "Terminating Membership" and "Expelling a Member" sections.
- If the member has occupancy rights, the co-op may terminate these only if it terminates his or her membership at the same time. Occupancy rights and membership may be terminated only if the member no longer lives in a member unit or for grounds stated in the by-laws. These grounds cannot be unreasonable or arbitrary.

The Act sets out detailed procedures to ensure that members facing termination of membership and eviction are treated fairly and openly by the co-op. These procedures include the following key elements:

- Membership and occupancy rights can be terminated only by a majority of the directors at a board meeting.
- The member has to be notified in advance of the board meeting and the reasons the board plans to terminate his or her membership and occupancy rights.
- The member has the right to appear at the meeting in person and be represented by a lawyer or other representative.
- The member must be told that he or she has the right to appeal the board's decision at a members' meeting.
- The member also has the right to have a written statement distributed to all members, at the co-op's expense, before the meeting at which the appeal will be heard. The statement may be up to 5,000 words. The board can refuse to distribute the statement if it appears that the statement is not related to the appeal or the co-op's affairs.
- The members may by majority vote either confirm, reverse, or modify the board's decision. If the vote results in a tie or there is no quorum when the vote is taken, then the board's decision stands.
- The co-op may actually evict a member only by getting a writ of possession from a court. The member has the right to be heard by the court before it issues such a writ.

Except for fixed-term leases of less than a year, membership and occupancy rights cannot be terminated on the grounds that their term has expired. These rights can be terminated only if the person consents to their expiry in writing.

Membership and occupancy rights for a fixed term of less than one year expire if the co-op gives the person at least 30 days written notice of their expiry before the end of the term. The by-laws may state a longer notice period. If the person would like to continue to enjoy membership and occupancy rights, he or she must notify the co-op in writing of their wishes within 30 days of receiving the co-op's notice. The by-laws may state a longer notice period.

For Your Information: The Co-operative Housing Association of Ontario (CHAO) has a useful, step-by-step guide to these important procedures called Legislative Bulletin #4. You may get a copy from CHAO at:

- 2 Berkeley Street, Suite 207
Toronto ON M5A 2W3
Tel: (416) 366-1711
Fax: (416) 366-3876

BY-LAWS

[CCA, Sections 23, 24, and 70; Bill 160, Section 1]

By-laws are co-ops' internal rules. They deal with such things as how members are admitted, how meetings are held, how directors are elected, the length of directors' terms, the responsibilities of directors and officers, and the appointment and role of auditors. By-laws are subject to the articles and the Act. If there is a conflict between the by-laws and the articles, the articles prevail. If there is a conflict between the by-laws and the Act, the Act prevails.

In most cases, a by-law is first proposed and passed by a majority of directors at a board meeting. The by-law does not come into effect until it is confirmed by at least two-thirds of the votes cast at a members' meeting. The co-op's articles may require a higher proportion of votes to adopt by-laws.

In multi-stakeholder co-ops, by-laws have to be passed by the directors and confirmed by at least two-thirds of the members of each stakeholder group voting at either a general members' meeting or separate meetings of each stakeholder group.

Generally, co-ops don't have to file copies of their by-laws with the Ministry of Finance. However, if a co-op changes the number of its directors or officers, or moves its head office to another municipality, it has to file a certified copy of the relevant by-law. Please see the *Filing Requirements and Record Keeping* guide for more details.

MEMBERS' MEETINGS

Regular, well-organized and well-advertised members' meetings are essential to keep members involved in running their co-op. Because members' meetings are so important, the Act states how often meetings are to be held, what kind of notice is to be given, and what essential business is to be done. The Act also sets procedures for members themselves to call meetings when they disagree with the board of directors.

Annual Meetings

[CCA, Sections 77, 127, and 128]

A co-op must hold its first annual meeting within 18 months of its incorporation. After that, annual meetings must be held at least every 15 months.

At annual meetings, members have the right to:

- Hear and examine the auditor's report on their co-op's financial position and the results of its operations for the past year;
- Get copies of their co-op's financial statements;
- Discuss any other issue on the agenda related to the co-op's business.

Although not required to do so, co-ops usually elect directors at their annual meetings.

Other Members' Meetings

[CCA, Section 78]

Other members' meetings may be called by the directors at any time to deal with anything affecting the co-op.

Members' Requisitions

[CCA, Sections 70, 71, and 79]

A members' requisition is a petition asking the directors to do certain things. All requisitions must be signed by a certain percentage of members and be delivered to the co-op's head office. Members may make requisitions to:

- **Call a Members' Meeting**

The requisition must state the reasons for the meeting and be signed by at least five percent of the members. If the directors do not call a meeting within 30 days of receiving the requisition, any member who signed the requisition may call the meeting. Notice of this meeting must be circulated within 60 days of the requisition's delivery. The meeting has to be called in accordance with the co-op's by-laws. If the by-laws require more than 21 days notice for other types of meetings, then 21 days is sufficient notice for meetings requisitioned by members.

- **Circulate Members' Resolutions**

Five percent of the members may ask the directors to notify all members of any resolution that is going to be considered at an upcoming members' meeting. The members may also ask the directors to attach to this notice a statement about the resolution or any other matter that will be discussed at the meeting. This statement cannot be longer than 1,000 words.

The co-op or someone believing they would be harmed by the statement may apply to a court for an order to prevent the statement's circulation. Such an order will be issued if the court decides the statement is intended to secure needless publicity for defamatory purposes. The directors are not required to circulate the statement if a court order is obtained.

Requisitions about circulating notice of a resolution must be delivered to the co-op's head office at least 21 days before the relevant meeting.

Requisitions about circulating statements must be delivered to the co-op's head office at least 14 days before the meeting.

Members making such requisitions must deposit enough money with the co-op to cover the cost of circulating notices or statements. The co-op must refund this money unless a majority of the members at the meeting vote not to do so.

- **Call a Directors' Meeting to Pass a By-Law or Resolution**

Ten percent of the members may ask the directors to call a directors' meeting to pass a by-law or a directors' resolution. The requisition must state the by-law or resolution that the directors are being asked to pass.

Within 21 days of the delivery of the requisition, the directors must:

- Call a directors' meeting and pass the by-law or resolution;
- Call a members' meeting to confirm the by-law or resolution, unless the resolution does not require confirmation by the members.

If the directors do not do these things, any member who signed the requisition may call a members' meeting to pass the by-law or resolution. The meeting has to be called in accordance with the co-

op's by-laws. If the by-laws require more than 21 days notice for other meetings, then 21 days is enough notice for calling this meeting. Any by-law or resolution passed in this way is valid.

If the by-law or resolution contained in the requisition is not confirmed at the members' meeting, a similar requisition cannot be made for at least two years.

The co-op must reimburse the members who signed the requisition for reasonable expenses, unless a majority of members at the meeting refuse to do so. The co-op may also reimburse these expenses by holding back any remuneration owed to the directors who failed to act on the requisition.

Notice

[CCA, Section 75]

Each member is entitled to receive proper notice of the date, time, place, and reason for upcoming members' meetings. Notices may be delivered by mail or, if allowed in the co-op's by-laws, by hand. Notices must be delivered at least 10 days before meetings, but not more than 50 days.

Location

[CCA, Section 74]

Members' meetings should be held at the co-op's head office. However, the by-laws may allow members' meetings to take place anywhere in Ontario. Members' meetings may also be held outside Ontario if the articles allow it.

Voting

[CCA, Sections 1, 24, and 76]

Each member has only one vote.

Because co-ops are democratically controlled by their members, proxy voting is not allowed. In other words, a member may not send someone to vote on his or her behalf. However, corporate members may appoint directors or officers to vote on their behalf. Representatives of corporate members have only one vote.

When a co-op's members are divided into member groups, these groups may elect delegates who in turn vote on their behalf in elections of directors. Member groups may be created on the basis of common interest or geography. The number of delegates that each member group can elect may be based on the number of members in each group or the amount of business each group does with the co-op, or a combination of the two. Delegates must be members, directors, or officers of the co-op.

In a multi-stakeholder co-op, members may vote as members of specific stakeholder groups in addition to voting at general members' meetings. Stakeholder groups may be set up on the basis of common interest or geography. The co-op's articles state the number of directors each stakeholder group can elect. The articles and by-laws may also set out other important matters requiring the approval of stakeholder groups.

If two or more members jointly hold a co-op's membership shares, they are counted as one member and have only one vote.

Resolutions

[CCA, Sections 104 and 124]

Members make many of their decisions by accepting or rejecting written resolutions or proposals at a members' meeting. Usually, one member or the board introduces (or moves) a resolution and another member supports (or seconds) it. The resolution is then discussed by the members

and a vote is taken. To be passed, a resolution must be approved by a majority of the members present at the meeting.

Members' resolutions may deal with things like removing a director or auditor before his or her term expires, and electing a new director or auditor in his or her place.

Special Resolutions

[CCA, Section 1;
Bill 160, Sections 1 and 68]

For many important issues, a special resolution is required instead of an ordinary resolution. For example, special resolutions are required to:

- Change a co-op's articles of incorporation;
- Adopt by-laws;
- Approve the merger of one co-op with another;
- Approve the sale, lease, or transfer of all or most of the co-op's property.

A co-op's articles or by-laws may also require special resolutions for other matters.

A special resolution is passed by the directors and approved by at least two-thirds of the members present at a members' meeting. The co-op's articles may require a larger majority of members to approve special resolutions.

In a multi-stakeholder co-op, a special resolution is passed by the directors and confirmed by at least two-thirds of the members of each stakeholder group voting at either a general members' meeting or separate meetings of each stakeholder group.

Minutes

[CCA, Section 114]

Minutes are records of meetings. Co-ops are required to keep minutes of all meetings of members, directors, and any executive committees. Minutes should include the date, time, place, and agenda of the meeting, text of resolutions, results of votes, records of carried and failed motions, and the names of movers, seconders, chairpersons, recorders of minutes, and any other participants. Minutes of members' meetings are available for inspection by all members; minutes of directors' meetings and executive committee meetings are not.

DIRECTORS

[CCA, Sections 89, 96, and 108]

Directors are the co-op's legal representatives; the decisions they make and the actions they authorize are the co-op's. Directors are elected by members to set the general policy of the co-op and to hire and supervise management, if any. In smaller co-ops, directors often manage the co-op's business themselves. Directors are also responsible for such things as approving new members, passing by-laws, and ensuring that accurate records are kept.

In conducting the co-op's affairs, directors are legally required to act honestly, in good faith, and in the co-op's best interests. In conducting the co-op's business, directors must also exercise the same care and skill that they would apply in conducting their own affairs.

Qualifications

[CCA, Sections 85, 87, and 89]

All directors must be members of the co-op. Because directors are liable for a co-op's actions, they must be at least 18 years old. Directors may not be bankrupt. A majority of the board of directors must be resident Canadians.

Electing Directors

[CCA, Sections 90 and 91]

Directors are usually elected at annual general members' meetings, although this is not required by the Act.

Members cast votes for each director's position to be filled. If three positions are available, then each member has to vote for three different

candidates. No candidate can receive more than one vote from any one member.

Directors may be elected for terms of up to five years. There is no limit on the number of terms a director may serve, although a co-op could set one in its by-laws.

Directors may be elected on a rotating basis. This means that not all directors are elected or re-elected at the same time. In addition, at least two directors have to retire from office each year. For example, if a board has nine directors, three might be elected every year. Electing directors this way gives new directors a chance to work with and learn from experienced directors.

Number of Directors

[CCA, Sections 85, 88, 92, and 93;
Bill 160, Section 93.1]

All co-operatives must have at least three directors. In their articles, co-ops may specify that the number of directors will vary between a minimum and a maximum. In this case, the exact number of directors has to be set by special resolution. This can also be done by a resolution of the board if so authorized by a special resolution.

In a multi-stakeholder co-op, each stakeholder group has to elect at least one director.

If vacancies occur on the board and a quorum of directors remains, the directors may appoint qualified people to fill the vacancies for the rest of the terms. A co-op's articles may instead require vacancies to be filled by election at a member's meeting.

If the number of directors in office is less than a quorum, the remaining directors must immediately call a members' meeting to fill the vacancies. If no directors remain in office, any member may call this meeting.

Removing Directors

[CCA, Section 104; Bill 160, Section 104]

Members may remove any director before the end of his or her term by a majority vote at a members' meeting called for that purpose. At the same meeting, the members may elect a new director to serve for the rest of the term.

In a multi-stakeholder co-op, members of a stakeholder group may remove any director elected by that group before the expiry of his or her term. This has to be done by a majority vote at a stakeholder group meeting called for that purpose. At the same meeting, members may elect a new director to represent the stakeholder group for the rest of the term.

Directors' Liability

[CCA, Sections 17, 100, 101, 102, and 103]

Although a co-op's incorporation gives individual members the protection of limited liability, directors could be personally liable for mismanaging the co-op's affairs or approving illegal or criminal actions. For example, directors who:

- Approve actions which cause environmental damage may face fines and/or criminal charges.
- Buy back shares, repay loans, or declare and pay dividends in a way prohibited by the Act are liable to the co-op for the amount involved.
- Employ staff despite knowing that the co-op cannot afford to pay them are liable for up to six months wages and 12 months vacation pay.

- Approve a type of financial assistance to directors, members, and employees that is not normally available to all members are liable to the co-op and its creditors for any losses.

Directors who are on record as not approving such actions may have less liability or none. Section 101 of the Act sets out the procedures directors have to follow in recording their dissent.

In addition to the liability they may have under the Co-operative Corporations Act, directors may have liabilities imposed on them by other Acts. Directors who are unsure about the legality or financial prudence of a proposed action may want to consult a lawyer or financial advisor.

DIRECTORS' MEETINGS

[CCA, Sections 93, 95, and 96; Bill 160, Sections 93 and 95]

Directors' meetings may be held at any time to deal with the co-op's business. Meetings have to be called and attended by a quorum of the board. Unless the articles or by-laws provide otherwise, a majority of the board makes up a quorum. However, a quorum cannot be less than two-fifths of the board. In a multi-stakeholder co-op, at least one director from each stakeholder group has to be present for a quorum. A majority of the directors attending meetings must be resident Canadians.

Executive Committees

[CCA, Section 97]

Subject to restrictions in the by-laws, directors can set up executive committees to exercise any powers of the board.

To have executive committees, the co-op must have more than six directors. The directors elect the members of executive committees from among themselves. Such committees must have at least three members. A majority of executive committee members must be resident Canadians. A majority of the members present at executive committee meetings must also be resident Canadians. A quorum of an executive committee cannot be less than a majority of the members of the committee.

Notice

[CCA, Section 95;
Bill 160, Section 95]

Directors should receive notice of the time, place, and general purpose of a meeting. The form and method of delivery of the notice can be dealt with in a co-op's by-laws. If it is not, then each director should receive at least ten days' written notice by mail.

Location

[CCA, Section 94]

Directors' meetings should be held at the co-op's head office, although the by-laws may allow directors' meetings to be held elsewhere. In any fiscal year, the majority of directors' or executive committee meetings must take place in Canada.

The by-laws may allow meetings of directors or executive committees to take place by conference call if all the directors agree.

Minutes

[CCA, Section 114]

Minutes of all directors' and executive committee meetings must be kept.

Disclosure of Interest in Contracts

[CCA, Section 98]

Directors may find themselves in situations where their personal interests make it difficult for them to act in the co-op's best interests. For example, say a co-op needs to buy machinery distributed by one its director's businesses. That director would be in the awkward position of trying to get the best deal for the co-op while trying to make a sale for his or her own company.

For reasons like this, the Act requires directors to disclose any interests they may have in contracts involving the co-op. Directors with such interests have to declare them at a directors' meeting. This is necessary only if the director's interest in a contract is material (tangible benefits are likely) and the contract is of a kind not available to all members.

For example, in a marketing co-op where a normal part of the co-op's business is to buy peaches from members, directors who sell peaches to the co-op would not be required to disclose an interest in this type of contract. However, if the co-op were about to buy land from a director, and buying land from members is not a usual part of the co-op's business, then the director would have to declare his or her interest in this contract to the board.

If a director is required to declare his or her interest in a possible contract, the declaration must be made at the directors' meeting when the contract is first considered. Co-ops may want to pass by-laws requiring directors to leave meetings where matters involving important material interests of theirs are discussed.

If a director acquires an interest after the co-op has signed the contract, he or she must declare it at the next directors' meeting.

The co-op has no claim on any benefits enjoyed by the director if the contract was in the co-op's best interests at the time it was signed, and if the director acted in good faith, properly declared his or her interest in the contract, and did not vote on the contract. Such contracts cannot be nullified by the co-op.

In addition, a contract in which a director is interested cannot be nullified by the co-op if the director has notified the members of his or her interest and the contract was confirmed by a special resolution at a members' meeting.

OFFICERS

[CCA, Sections 105, 106, 107, and 108]

The officers of a co-operative include the chair of the board, president, treasurer, secretary, and general manager. Every co-op has to have a president and a secretary. Co-ops may have other officers as set out in their by-laws or directors' resolutions.

If a co-op wants to have a chair of the board, a by-law must be passed stating the chair's responsibilities and how he or she is to be elected or appointed by the directors. The by-laws may assign the chair any or all duties of other officers.

Unless the articles or by-laws state otherwise, the president is elected by the directors from among themselves. The president and the chair of the board are the only officers who must also be directors of a co-op. The secretary and other officers may be either appointed or elected by the directors.

Like directors, officers are required to act honestly, in the co-op's best interest, and to take reasonable care in conducting the co-op's business.

President

[CCA, Sections 75 and 106]

Unless the by-laws state otherwise, the president usually chairs members' meetings and signs official documents in the name of the co-op. If the by-laws assign any of the president's responsibilities to the chair, they must state the president's remaining duties.

Secretary

[CCA, Sections 66, 101, and 171.8]

The secretary is responsible for such things as accepting notices on behalf of a co-op, giving notices to members on behalf of the board of directors and signing notices to terminate a person's membership.

Officers' Liability

[CCA, Section 17]

Officers are responsible to a co-op and its creditors for any losses that result from approving a type of financial assistance to directors, members, or employees that is not normally available to all members.

RECORDS

[CCA, Sections 114, 115, 117, and 118]

Generally, co-operatives are required to keep these records at their head office:

- Copies of the articles of incorporation, by-laws, resolutions, and special resolutions;
- An alphabetical register of members and security holders over the last ten years, including addresses;
- A register of all transfers of securities;
- A register of past and present directors, including terms served and addresses;
- Accounting records of financial and other transactions;
- Minutes of meetings of all members, directors, and any executive committee.

The register of security holders and register of transfers of securities may be kept at any other location in Ontario, if so authorized by a directors' resolution.

All or part of a co-op's accounting records may be kept at any place where the co-op carries on its business. At the head office, however, directors must have access to the accounting records they need to assess the co-op's quarterly financial position.

Examination of Records

[CCA, Sections 114, 115, 118]

Directors may examine the following records at the co-op's head office during normal business hours: articles of incorporation; by-laws and all resolutions; register of members, directors, and security holders; register of transfers of securities; accounting records; and minutes of members', directors', and executive committee meetings.

Members have the right to examine and make extracts from the following records during the co-op's normal business hours: articles of incorporation; by-laws and all resolutions; register of members, directors, and security holders; register of transfers of securities; and minutes of members' meetings.

DISTRIBUTION OF SURPLUS

A co-op's surplus is what is left of its earnings after operating expenses are paid, but before the payment of taxes. The Act allows co-ops to use their surplus in the ways discussed in this part of the guide.

Reserve Funds and Dividends on Shares

[CCA, Section 54]

Co-ops' by-laws may allow them to set aside part or all of their surplus to create reserve funds or pay dividends on shares.

Patronage Returns

[CCA, Section 55]

Co-ops often distribute their surplus to members as patronage returns, based on how much business they have done with the co-op. In calculating patronage returns, allowances can be made for the type, volume, or quality of the goods or services involved. For example, in a marketing co-operative where the sale of grapes contributes proportionately more to the co-op's surplus than the sale of peaches, the co-op could choose to pay a higher patronage return rate on grapes.

In a worker co-op, patronage returns may be paid, credited, or allocated to members based either on the number of hours worked or the total compensation paid each year.

In non-profit housing co-ops, the surplus that may be distributed as patronage returns cannot include any proceeds from the sale of the co-op's assets. Non-profit housing co-ops having operating agreements with

the Ministry of Housing or the Canada Mortgage and Housing Corporation should refer to those agreements for additional guidelines about patronage returns.

If stated in the by-laws, patronage returns may also be distributed to non-members at a rate the same as or less than that for members. The by-laws may also state that no patronage return will be distributed on goods or services valued at \$250 or less.

Mandatory Reinvestment of Patronage Returns

[CCA, Section 56]

The by-laws may require members to reinvest part or all of the patronage returns they receive in a fiscal year. Members may be required to use their patronage returns to buy more shares in the co-op or to make further member loans. Members cannot be required to reinvest patronage returns if their co-op is insolvent.

SECURITIES

Offering Statements

[CCA, Section 34; Bill 160, Section 34]

Generally, co-ops must file an offering statement with the Ministry of Finance when planning to sell securities to more than 25 people, or when the sale of securities increases the number of security holders in the co-op to more than 25. **If the issue of securities does not increase the number of security holders to more than 25, you do not have to prepare an offering statement.**

In addition, even co-ops with more than 25 security holders are not required to file offering statements if they are only planning to:

- Issue membership shares or member loans as a condition of membership and,
 - The value of the issue does not exceed \$100 per member per year, and
 - The total amount held by any member does not exceed \$1,000;
- Issue new shares or member loans to members by using patronage returns owed to members;
- Use dividends owed to shareholders to issue new shares.

For more information on filing offering statements, please see the *Filing Requirements and Record Keeping* package available from Co-operative Development Services.

Dividends

[CCA, Section 58; Regulation 178,
Section 12.2; Bill 160, Section 58]

Dividends on *membership shares* cannot be higher than the prime rate of a financial institution identified in the by-laws plus two percent. Recently, the cap on dividends that may be paid on *preference shares* was removed. Co-ops can now set a cap in their by-laws if they wish to do so.

Interest

[CCA, Sections 49 and 56;
Regulation 178, Section 12.2]

The most interest that can be paid on member loans is the prime rate of a financial institution identified in the by-laws plus two percent. This cap also applies to members' patronage returns that must be loaned to a co-op. There is no cap on the interest that can be paid on other types of loans.

Redemption of Preference Shares

[CCA, Section 31; Bill 160,
Sections 64 and 66; Regulation 234/95,
Section 12.9]

If the articles state that a co-op can redeem (buy back) part of a shareholder's preference shares without the holder's consent, the board of directors has to choose the shares either by lot, in proportion to the number of shares held by each shareholder, or in some other way agreed to by the board and shareholders. Co-operatives may not redeem shares if they are insolvent or if redeeming shares would make them so.

Co-ops may create classes of preference shares that they are not required to redeem when a member leaves or is expelled from the co-op. The

characteristics of such shares have to be described in the articles and offering statement.

Premium on Preference Shares

[Bill 160, Sections 30 and 32;
Regulation 234/95, Section 12.3]

Co-ops may now pay a premium on top of the par value of preference shares which they redeem. The premium is calculated using a formula contained in the articles, but may not be more than 10 percent per year (compounded) or the percentage increase in the Consumer Price Index (all items) as published by Statistics Canada, whichever is greater. Premiums cannot be paid on membership shares.

DISSOLUTION

Members may voluntarily dissolve their co-op at any time. To ensure that a co-op meets its obligations to members, creditors, and investors, the Act sets procedures that have to be followed to dissolve a co-op and distribute its property.

Voluntary Dissolution

[CCA, Section 163]

Voluntary dissolution first requires members' approval. A majority of the members have to vote for a resolution to dissolve the co-op at a members' meeting. The articles may state a different proportion of votes to confirm the resolution, but it cannot be less than half of the members. Alternatively, all the members may consent to the dissolution in writing.

If the co-op has been incorporated for less than two years and has not done any business, issued shares, or accepted member fees or loans, a majority of the incorporators may authorize the dissolution.

Distribution of Property

[CCA, Sections 5, 171.2, and 162;

Bill 160, Section 162]

When a co-op is dissolved or wound up it has to pay its debts and liabilities before it distributes any of its property. The articles or by-laws may state that, after paying its debts and liabilities, the co-op may distribute its remaining property:

- Equally among the members;

- Among the members based on their patronage returns over the last five fiscal years;
- To one or more co-operatives or charitable organizations.

Unless a co-op's articles or by-laws deal with the distribution of remaining property, it is to be distributed equally among all members.

Non-profit Housing Co-operatives

Non-profit housing co-ops may not distribute any of their property to members on dissolution. After paying their debts and liabilities, non-profit housing co-ops' remaining property has to be distributed among one or more non-profit housing co-ops or charitable organizations.

ARTICLES OF AMENDMENT

[CCA, Section 151]

Along with the Co-operative Corporations Act, a co-op's articles of incorporation form its basic legal framework. Over time, your co-op may want to change its articles to respond to members' different needs or developments in the co-op's business. For example, your co-op might want to change the articles that deal with its shares, membership fees, or name.

Articles can be changed or amended by filing articles of amendment (Form 7) with the Ministry of Finance. Please see the *Filing Requirements and Record Keeping* guide for more information.

To be valid, articles of amendment have to be authorized by a special resolution. A certified copy of the resolution has to be attached to the articles of amendment.

Certain changes to the articles require specific approval. As well as a special resolution, the written consent of 60 percent of the members is needed to authorize articles of amendment that convert the co-op into a:

- Co-op with or without share capital;
- Business corporation under the Business Corporations Act;
- Corporation under Part III of the Corporations Act.

Non-profit housing co-ops are not allowed to amend their articles so that they are no longer non-profit housing co-ops.

If the articles of amendment change the rights of preference shareholders or create a new class of preference shares that rank equally with or ahead of existing preference shares in any way, the Act requires:

- A special resolution authorizing the articles of amendment;

- Consent of the preference shareholders affected. This consent can be:
 - In writing, by all affected preference shareholders.
 - In writing, by 95 percent of the holders of 95 percent of the affected preference shares. These shareholders must be given 21 days notice of the special resolution authorizing the articles of amendment. Consent is not considered to have been given if any affected preference shareholder dissents in writing within this 21-day period.
 - By two-thirds of the votes cast by affected preference shareholders at a meeting called for that purpose. This method of obtaining shareholder consent has to be part of the co-op's articles for it to be used.

MAINTAINING CO-OPERATIVE STATUS

[CCA, Sections 1, 143, and 144]

In order to keep their legal status as co-operatives, co-ops have to operate on a co-operative basis. To do so, co-ops must respect the basic co-operative principles, such as one member, one vote. In addition, since the main purpose of co-ops is to provide a service to members, co-ops must do most of their business with members.

Generally, if a co-op is not operating on a co-operative basis or has not done at least half of its business with members over the preceding three years, the Ministry of Finance may change the co-op's legal status. Specifically, the co-op may be changed either to a corporation subject to the Business Corporations Act or to a non-share corporation subject to Part III of the Corporations Act.

Worker co-ops may lose their co-operative status if more than half of the full- and part-time employees were not members over most of a three-year period. In this case, the worker co-op may also be changed to a corporation subject either to the Business Corporations Act or the Corporations Act.

Before any co-op's legal status can be changed in these ways, it has the right to a hearing convened by the Ministry of Finance.

Since non-profit housing co-ops cannot be changed into any other type of co-op or corporation, the Act requires them to do at least half of their business with members over any three-year period.

MORE QUESTIONS?

If you have any questions about anything in this guide or other questions about co-ops, please contact Co-operative Development Services at the address and number given at the beginning of this guide.



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